

**REMARKS**

Claims 1-19 have been examined on their merits.

Applicant herein cancels claims 11-13 without prejudice and/or disclaimer.

Claims 1-10 and 14-19 are all the claims presently pending in the application.

1. Claims 3-10 stand rejected under 35 U.S.C. § 112 (2<sup>nd</sup> para.) as allegedly being indefinite. Applicant traverses the § 112 (2<sup>nd</sup> para.) rejection of claims 3-10 for at least the reasons discussed below.

Applicant herein amends claim 3 to correct the antecedent basis errors with respect to relative net bit rate and gross bit rate, and to provide linkage to claim 1. Since there are no pending art-based rejections pending against claims 3-10, Applicant submits that claims 3-10 are now allowable. Applicant respectfully requests that the Patent Office reconsider and withdraw the § 112 (2<sup>nd</sup> para.) rejection of claims 3-10.

2. Claims 1 and 11-19 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Fayad *et al.* (U.S. Patent No. 6,697,776). The rejection of claims 11-13 is now moot due to their cancellation. Applicant traverses the § 102(e) rejection of claims 1 and 14-19 for at least the reasons discussed below.

To support a conclusion that a claimed invention lacks novelty under 35 U.S.C. § 102, a single source must teach all of the elements of a claim. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986). A claim is anticipated only if

each and every element as set forth in the claim is found either expressly or inherently in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). A single source must disclose all of the claimed elements arranged as in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Thus, the cited reference must clearly and unequivocally disclose every element and limitation of the claimed invention.

Fayad *et al.* fail to teach or suggest at least a system that determines the quality of a radio link based on a determined net bit rate, as recited in claim 1. Fayad *et al.* discloses, *inter alia*, encoding of analog signals (*e.g.*, voice, music) by converting the analog signals into digital signals. *See, e.g.*, col. 1 lines 15-20 of Fayad *et al.* More particularly, Fayad *et al.* is directed to the problem that systems optimized for encoding of speech signals are not optimized for encoding of non speech signals, such as music. *See, e.g.*, col. 1 lines 29-31. To solve this problem, Fayad *et al.* disclose a system where the bit rate encoding can be changed dynamically to provide encoding for different types of signals at bit rates, and encoding methods optimized to properly reconstruct the input signal whether speech or non-speech. *See, e.g.*, col. 2 lines 1-9 of Fayad *et al.* Moreover, the net bit rate recited in independent claim 1 of the present invention is clearly different from the bit rate disclosed in Fayad *et al.* In the context of the present invention, the meaning of net bit rate is well known for the skilled person, and is specifically defined at page 8, lines 2-4 of the instant specification. In addition, one of skill in the art is aware that the quality of a radio link is clearly different of the quality of a signal after being encoded into digital form.

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. APPLICATION NO. 09/919,800  
ATTORNEY DOCKET NO. Q65594

Based on the foregoing reasons, Applicant submits that independent claim 1 is allowable over Fayad *et al.*, and requests that the Patent Office reconsider and withdraw the § 102(e) rejection of claim 1.

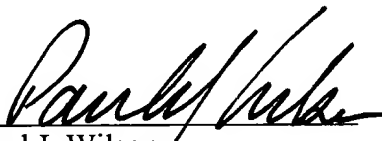
With respect to new independent claims 14 and 17, Applicant submits that independent claims 14 and 17 are allowable for at least reasons analogous to those discussed above with respect to claim 1. Applicant submits that independent claims 14 and 17 are allowable over Fayad *et al.*, and further submits that claims 15, 16, 18 and 19 are allowable as well, at least by virtue of their dependency from claims 14 and 17, respectively. Applicant respectfully requests that the Patent Office reconsider and withdraw the § 102(e) rejection of claims 14-19.

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. APPLICATION NO. 09/919,800  
ATTORNEY DOCKET NO. Q65594

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

  
Paul J. Wilson  
Registration No. 45,879

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

Date: June 28, 2005